

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**SPARTA INSURANCE COMPANY, \***

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**Plaintiff, \***

**\***

**\* Civil Action No. 2:17CV1960-RDP**

**vs. \***

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**ALABAMA TERMITE & PEST \***

**\***

**CONTROL, INC, its principal, \***

**\***

**KENNETH ESTES, and JAMES \***

**\***

**and MARY JEFFERSON \***

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**Defendants. \***

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**JOINT MOTION FOR VOLUNTARY DISMISSAL  
WITHOUT PREJUDICE**

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Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiff SPARTA Insurance Company (“SPARTA”), Defendant Alabama Termite and Pest Control, Inc. (“ATPC”), and Defendant Kenneth Estes (collectively, “Parties”), by and through their undersigned counsel, respectfully submit that this action (2:17cv1960), in its current posture, is due to be dismissed without prejudice. As grounds for this motion, the Parties provide the following:

1. During a hearing on ATPC’s First Motion [10] to Stay, the Court noted that the issue of whether SPARTA owes ATPC a duty to defend in the underlying state court action would most likely not be adjudicated prior to the state court action’s May 14<sup>th</sup> trial date.

2. As a practical matter, therefore, the issue of whether SPARTA owes ATPC a duty to defend is most likely moot, at least with respect to the underlying state trial court proceedings.

3. Furthermore, the Court previously dismissed (Doc. 21) SPARTA's duty to indemnify argument without prejudice because it was premature.

4. In light of the foregoing, the Parties to this motion argue that there are presently no controversies for this Court to adjudicate in this Federal Declaratory Judgment Action.

5. Accordingly, the Parties respectfully request that this Court dismiss SPARTA's Federal Declaratory Judgment Action without prejudice.

6. The Parties to this motion further stipulate that:

a. SPARTA shall maintain any and all coverage defenses that were raised or could have been raised in this Federal Declaratory Judgment Action;

b. SPARTA has reserved its rights to reassert any and all coverage defenses that it might have regarding whether SPARTA owes ATPC a duty to defend or a duty to indemnify;

c. ATPC and James and Mary Jefferson have reserved their rights to reassert any claims and/or defenses that were raised or could have been raised in this Federal Declaratory Judgment Action;

d. The Parties shall bear their own costs;

7. Finally, in light of this Joint Motion to Dismiss without Prejudice, the Parties respectfully request to be relieved from filing a Joint Status Report, the deadline for which is March 7<sup>th</sup>, 2018 (Doc. 21).

8. Counsel for James and Mary Jefferson has indicated that he opposes this motion.

**Respectfully submitted** on March 7, 2018

*/s/ Allan S. Jones*

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**Allan S. Jones (ASB-4458-E37A)**

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*/s/ Jon B. Terry*

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### **CERTIFICATE OF SERVICE**

I hereby certify that I have this date, using the CM/ECF filing system which will send notification of such filing, served a copy of the foregoing pleading upon counsel of record listed below on March 7, 2018:

Thomas F. Campbell  
John Bowers  
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James and Mary Jefferson  
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**s/ Allan S. Jones**  
**Of Counsel**